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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re HANNAH W., a Person Coming Under the Juvenile Court Law.	B245937 (Los Angeles County Super. Ct. No. CK90173)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. JENNIFER W., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County, Elizabeth Kim, Juvenile Court Referee. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

John Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel for Plaintiff and Respondent.

Jennifer W. appeals the court's decision to continue dependency court jurisdiction over her daughter, Hannah W.[1] We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Hannah W. came to the attention of the Department of Children and Family Services in September 2011 after Jennifer W. hit her with a wooden back scratcher, leaving bruises and red marks. Jennifer W. told DCFS that she hit her daughter, who had recently turned three years old, multiple times with the back scratcher on the hands and legs because she defecated in her pull-up training diapers. Visual inspection of Hannah W. revealed marks on her forearms, left hand, right knee, right calf, mid-back, and lower back.

Jennifer W. acknowledged having disciplined Hannah W. in this manner before, but said she usually put her in time out or made her go to sleep. She claimed to be shocked when she saw the bruises on her daughter, as she had not bruised in the past when hit with the wooden back scratcher. Hannah W.'s father told DCFS that a year ago he had seen marks and bruises on Hannah W., as well as a deep scratch on her neck that he did not believe Hannah W. could have inflicted on herself. He did not call the child abuse hotline because he thought that Jennifer W. would not permit him to see Hannah W. if he did. He had seen Jennifer W. punish Hannah W. by "popping" her on the wrist or legs, and he was concerned that she would have been more aggressive in the punishment if he had not been present, as Jennifer W. knew that he did not believe in spanking.

DCFS detained Hannah W. and filed a dependency petition alleging that Hannah W. fell within the jurisdiction of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a) and (b). Within days of Hannah W.'s detention, Jennifer W. enrolled in parenting education, anger management training, and individual counseling. She also began undergoing drug tests. She pleaded no contest to the allegations of the petition, and Hannah W. was declared a dependent child of the court

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1 Hannah W.'s first name is spelled "Hanna" through most of the record, but we use the spelling on her birth certificate and Social Security card.

under section 300, subdivisions (a) and (b). The juvenile court ordered family reunification services.

Hannah W. and her mother had monitored visitation at the start. Early on, while Jennifer W. was appropriate during visits, Hannah W. had a difficult time warming up to her mother and expressed anger at her. Later, Hannah W.'s caregiver reported that Hannah W. managed well during visits, but that afterwards, she typically shut down or threw a tantrum. Jennifer W. was observed to try her best to engage Hannah W. during visits, and interactions were successful until Hannah W. had a tantrum, which tended to occur when she was being redirected or did not get her way.

Jennifer W. was enrolled in individual therapy, completed her parenting classes, and completed her anger management program. Jennifer W. participated freely in the parenting training, attempting to apply the skills she learned in class when she met with Hannah W. for visits. Jennifer W. told DCFS that she had learned a lot in the parenting class, now understood why Hannah W. was removed from her care, and felt confident that she would be able to parent her daughter more effectively when they were reunified. The facilitator of the anger management classes told DCFS that she was confident that Jennifer W. had a better grasp of her anger and that she was able to develop appropriate ways to identify and cope with her anger, as well as adequate problem solving skills. All of Jennifer W.'s drug tests were negative.

The court gave DCFS discretion to permit overnight visits for Hannah W. with Jennifer W. By March 2012 Jennifer W.'s visits were unmonitored, four times per week, for two to five hours each. In March 2012 the court ordered further liberalization of visitation, and for several months Hannah W. spent weekends with her mother. Jennifer W. initially had difficulty handling Hannah W.'s tantrums and emotional outbursts; the foster parent assisted her in redirecting Hannah W., and Jennifer W.'s ability to handle the tantrums improved.

In April 2012 Hannah W. began individual therapy and in May 2012 Hannah W. and Jennifer W. began conjoint counseling. Hannah W. was ordered placed in Jennifer W.'s home on May 14, 2012. Family preservation services began in July 2012. DCFS reported in November 2012 that the services were helping: "Previously

Hanna[h W.] would tantrum uncontrollably for an hour and now mother is able to redirect Hanna[h W.] within a 15 minute span and control the situation. Mother indicated that she feels that the services are working and mother is also able to better redirect Hanna[h W.] during periods when she is tantruming." Additionally, "since the child was returned to home of parent mother, and started receiving therapeutic sessions with her mother," the social worker had "observed that the child is able to communicate better and that the relationship between mother and child is much more relaxed as they continue to work together to improve bonding as well as Hanna[h W.'s] tantrums."

Jennifer W. was eager to gain full custody of her daughter, fully compliant with the case plan, and willing to participate in services. Although Jennifer W. wanted juvenile court jurisdiction to be terminated, DCFS opposed termination because the family preservation services being provided were so central to the improvement in the family's situation: the teaching and demonstration components of the services "continue[] to play a central role of helping mother learn to put her parenting skills in practice when Hanna[h W.] has tantrums." DCFS believed four months of family preservation services to be insufficient to ensure stability in the progress made.

The court conducted a contested section 364 review hearing on November 27, 2012. Jennifer W. testified that Hannah W. rarely had tantrums, and when she cried because she did not get her way, Jennifer W. would "put her on punishment and . . . make her go to her room." Jennifer W. testified that for misbehavior Hannah W., then four years old, was sent to her room for "an hour or two" "in solitary" without books or toys. Jennifer W. acknowledged that she had been told that time outs should last "a couple of minutes" but that her parenting instructor did not say that was a requirement, nor had her counselor or the family preservation staff said anything about her practice. Jennifer W. told the court that during a family preservation worker visit, Hannah W. spent the entire hour-long visit in her room, lying on her bed, without toys or books, as punishment for acting out. Hannah W. had calmed down within 5 to 10 minutes but she was left in her room for the remainder of the visit nonetheless. Jennifer W. monitored Hannah W. in her room when she was being punished.

The court expressed its alarm at this information about Jennifer W.'s discipline practices: "I'm also concerned because the mother testified that when a relative was caring for Hanna[h W.], that the relative stated that if Hanna[h W.] were to have a tantrum, that a few minutes would be enough for a time-out for a child of this age and that the mother has elected to extend that for an hour or two, taking away everything in the room and mak[ing] the child sit in isolation on her bed for hours at a time. So it appears as if even if the mother is receiving instruction, she may not either be receptive to or she's electing to ignore it." The court declined to terminate jurisdiction and found that the conditions that warranted initial jurisdiction were likely to exist if supervision were withdrawn. Jennifer W. appeals.

DISCUSSION

I. Sufficiency of the Evidence

Jennifer W. appeals the juvenile court's decision to continue jurisdiction over the child under section 364, claiming that there was insufficient evidence to establish that Hannah W. was at any risk of physical abuse or that Jennifer W. would use any controlled substances. We review the juvenile court's ruling continuing jurisdiction for sufficiency of the evidence (*In re N.S.* (2002) 97 Cal.App.4th 167, 172) and conclude that sufficient evidence supports the court's decision.

Jennifer W. acknowledges that the central issues in the case were "Jennifer's excessive discipline of Hannah and her history of drug abuse." She argues that there was no evidence that since the court had taken jurisdiction she had used drugs or "acted inappropriately with Hannah, much less physically abused her." Jennifer W. is accurate in her assertion that no evidence in the record exists to demonstrate that Jennifer W. had any drug abuse issues during jurisdiction: all her drug tests were negative and there were no indicia that she was using controlled substances. It is also correct that Jennifer W. has made significant efforts to learn parenting techniques and has made progress.

Excessive discipline, however, remains at the center of the case. While there was no evidence that Jennifer W. continued to strike Hannah W., Jennifer W. now disciplined her four year-old daughter by making her sit on her bed alone in her room, without toys

or books, for one to two hours when she misbehaved. Jennifer W. was aware that time outs for children Hannah W.'s age should last only a few minutes, and Hannah W. calmed down within 5 to 10 minutes after being sent to time out, but she nonetheless extended this isolation punishment, which she even called "solitary," for hours at a time. In light of this evidence of ongoing excessive punishment even with the provision of services and the court supervision, sufficient evidence existed to demonstrate that "the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn." (§ 364, subd. (c).)

Contrary to Jennifer W.'s assertion, this case is not like *In re N.S.*, *supra*, 97 Cal.App.4th 167. In that case, all the evidence indicated that the father had addressed the inability to manage his stress and anger that had led to jurisdiction. (*Id*. at pp. 172-173.) He had not had any anger outbursts during the period of jurisdiction, he had completed all case plan requirements, and he was making a concerted effort to integrate information learned in therapy into his life. (*Id*. at p. 173.) The father's therapist found no factors indicating that the minor would be at risk if in her father's care. (*Ibid*.) Because there was no evidence that the conditions that caused the court to assume jurisdiction over the child still existed or would exist if jurisdiction terminated, the juvenile court should have terminated jurisdiction. (*Ibid*.) Because the evidence in the instant case shows that Jennifer W. had not fully addressed the issue of excessive punishment that prompted the initial assertion of jurisdiction, the decision in *In re N.S.* does not support her argument for termination of jurisdiction.

II. Constitutional and Policy Arguments

Jennifer W. argues that legislative intent and the Fourteenth Amendment to the United States Constitution required the juvenile court to terminate jurisdiction here. As

Jennifer W. notes, "the purpose of dependency proceedings is to provide maximum safety and protection for children who are currently being physically, sexually or emotionally abused, neglected or exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm, while not disrupting the family unnecessarily or intruding inappropriately into family life." (*In re Kaylee H.* (2012) 205 Cal.App.4th 92, 109.) Continuing jurisdiction based on the evidence of ongoing risk to Hannah W. comports with that legislative policy.

Similarly, our conclusion that the evidence supported continuing jurisdiction over Hannah W. is dispositive with respect to Jennifer W.'s argument that the extension of jurisdiction violates the Fourteenth Amendment to the United States Constitution. As Jennifer W.'s continued use of excessive discipline demonstrated that Hannah W. remained at risk, state intervention is constitutionally authorized and therefore does not impermissibly infringe on the family's liberty interests. (*Troxel v. Granville* (2000) 530 U.S. 57, 68-69 ["so long as a parent adequately cares for his or her children (*i.e.*, is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of that parent's children"]; *In re Nolan W.* (2009) 45 Cal.4th 1217, 1238 ["In a dependency proceeding, the state is empowered to intervene because a parent's inadequacy puts a child at risk"].) Jennifer W. has not established any constitutional violation in the continuation of juvenile court jurisdiction here.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J. WOODS, J.